

RESOLUTION NO. 93-57

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A RESOLUTION OF THE LODI CITY COUNCIL
APPROVING THE EXPENDITURE OF FUNDS TO PURCHASE
FIREWORKS FOR THE FOURTH OF JULY 1993 CELEBRATION AND
FIREWORKS SHOW

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WHEREAS, in answer to request for proposals for a fireworks program for the Fourth of July celebration and fireworks show, proposals were received from the two known companies that provide these kinds of shows in this area; and

WHEREAS, said proposals have been compared, checked, and tabulated and a report thereof filed with the City Manager as shown on Exhibit A; and

WHEREAS, the proposals submitted by the two firms were identical in amounts bid; however, the number of shells provided in various sizes differed with each provider; and

WHEREAS, it has been determined by the Parks and Recreation Director that the larger number of large shells offered by Pyro Spectaculars, Inc. will afford a superior show;

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council hereby authorizes the expenditure of funds in the amount of \$8,000 for the fireworks program, said program to be supplied by Pyro Spectaculars, Inc.

Dated: May 5, 1993

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I hereby certify that Resolution No. 93-57 was passed and adopted by the City Council of the City of Lodi in a regular meeting held May 5, 1993 by the following vote:

Ayes: Council Members - Mann, Sieglock, Snider, and Pennino
(Mayor)

Noes: Council Members - Davenport

Absent: Council Members - None


Jennifer M. Perrin
City Clerk

Fire Works Bid Comparison**Zambelli - \$ 8,000**

Shell Description	A	B*
OPENER	20	20
BODY OF PROGRAM:		
Three Inch Shells	90	56
Four Inch Shells	62	49
Five Inch Shells	30	38
Six Inch Shells	20	31
GRAND FINALE	240	220
Total Shells	462	414

*Note: Both programs (A & B) are of equal value

Pyro Spectacular - \$ 8,000

Shell Description	
OPENER (67mm)	25
BODY OF PROGRAM	
Three Inch Shells	117
Four Inch Shells	80
Five Inch Shells	51
Six Inch Shells	25
GRAND FINALE	155
Total Shells	453

7) In the event PURCHASER cancels the display, it will be impractical or extremely difficult to fix the actual amount of PYRO's damages. The foregoing represents a reasonable estimate of the damages PYRO will suffer if PURCHASER cancels the display.

8) PYRO reserves the ownership rights and trade names that are used in or are a product of the pyrotechnic display to be performed herein. Any reproduction by sound, video or other duplication or recording process without the express written permission of PYRO is prohibited.

9) PYRO agrees to furnish insurance coverage in connection with the Display only, for the following risks and amounts: bodily injury and property damage, including products liability ONE MILLION DOLLARS (\$1,000,000) combined single limits. Such insurance shall include PURCHASER as an additional insured regarding claims made against PURCHASER for bodily injury or property damage arising from the operations of PYRO in performing the Display provided for in this Agreement. Such insurance afforded by PYRO shall not include claims made against PURCHASER for bodily injury or property damage arising from A) Failure of PURCHASER, including through or by its employees, agents and/or independent contractors, to perform its obligations under this Agreement, including, without limitation, those contained in Paragraph 3 of this Agreement; B) Failure of the PURCHASER to provide discretionary Spectator and Parking Areas referred to in Paragraph 3 of this Agreement. PURCHASER shall indemnify and hold PYRO harmless from all claims and suits made against PYRO for bodily injury or property damage arising from A) and B) of this Paragraph.

10) If any legal action is brought to enforce or interpret the terms or provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney fees and costs in addition to any other relief to which they may be entitled.

11) In the event PYRO breaches this agreement, or is otherwise negligent in performing the firework display provided for herein, PURCHASER shall, under no circumstances, be entitled to recover monetary damages from PYRO beyond the amount PURCHASER agreed to pay PYRO under this Agreement. PURCHASER shall not, under any circumstances, be entitled to recover any consequential damages from PYRO including, without limitation, for loss of income, business or profits.
EXCEPTING DAMAGES FOR PERSONAL INJURY OR PROPERTY DAMAGE.

12) It is agreed, nothing in this Agreement or in PYRO's performance of the display provided for herein, shall be construed as forming a partnership or joint venture between PURCHASER and PYRO. The parties hereto shall be severally responsible for their own separate debts and obligations and neither party shall be held responsible for any agreements or obligations not expressly provided for herein.

13) This Agreement shall be governed and interpreted under the laws of the State of California. It is further agreed that the courts of the State of California shall have exclusive jurisdiction to adjudicate any disputes arising out of this contract or performance of the display provided for herein. It is further agreed that the Central Judicial District of San Bernardino County, California, shall be proper venue for any such action.

14) Any Notice to the parties permitted or required under this Agreement may be given by mailing such Notice in the United States Mail, postage prepaid, first class, addressed as follows: PYRO - Pyro Spectaculars, Inc., P. O. Box 2329, Rialto, California 92377. PURCHASER - City Manager, City of Lodi, P. O. Box 3006, Lodi, CA 95241-1910

15) All terms of this Agreement are in writing and may only be modified by written agreement of both parties hereto. Both parties acknowledge they have received a copy of said written Agreement and agree to be bound by said terms of written Agreement only.

16) If there is more than one PURCHASER, they shall be jointly and severally responsible to perform PURCHASER's obligations under this Agreement. This Agreement shall become effective after it is executed and accepted by PURCHASER and after it is executed by PYRO at PYRO's offices in Rialto, California. This Agreement may be executed in several counter parts, including faxed copies, each one of which shall be deemed an original against the party executing same. This Agreement shall be binding upon the parties hereto and upon their heirs, successors, executors, administrators and assigns. PURCHASER recognizes that because of the nature of fireworks, an industry accepted level of 3% of the product used in any display may not function as designed and this level of nonperformance is acceptable as full performance.

In Witness Whereof the parties hereto, by and through their duly authorized agents, have set their hands and seals this _____ day of _____, 199____.

PYRO SPECTACULARS, INC.

VICE PRESIDENT

[Signature], Title

PURCHASER- CITY OF LODI

[Signature], Title
THOMAS A. PETERSON

City Manager

ATTEST:

[Signature]
Jennifer M. Perrin, City Clerk

APPROVED AS TO FORM:

[Signature]
Bob W. McNatt, City Attorney

PYRO SPECTACULARS, INC.
Display Agreement

1) THIS AGREEMENT, entered into this 5th day of May, 1993, by and between PYRO SPECTACULARS, INC., a California corporation hereinafter referred to as "PYRO" and CITY OF LODI hereinafter referred to as "PURCHASER".

2) PYRO agrees to furnish PURCHASER, in accordance with the terms and conditions hereinafter set forth, 1 fireworks display as per Program A, submitted, accepted and made part hereof, including the services of a licensed pyrotechnic operator to take charge of and, along with sufficient helpers, safely discharge the display.

The said display is scheduled to be performed on JULY 4, 1993 at LODI LAKE

3) PURCHASER, at its own expense, agrees to provide to PYRO:

A) A suitable DISPLAY SITE in which to stage the firework display, including a firing and fallout zone acceptable to PYRO in which the fireworks and firework debris may be exhibited, rise and fall safely. B) Adequate policing, guard protection, roping, fencing and/or other crowd control measures to prevent the access of the public or its property or any other people or property not authorized by PYRO into the DISPLAY SITE. C) The services and cost of standby firemen and/or any applicable permit fees as required by state and local statutes, ordinances or regulations. D) Access by PYRO, at all times, to the DISPLAY SITE to set up the display. If PURCHASER fails to fully comply with requirements A, B, C and/or D set forth above, PYRO shall have no obligation to perform and PURCHASER agrees to pay to PYRO the entire contract price plus any additional expenses incurred because of said failure. If, in its sole discretion, PURCHASER designates an area for members of the public to view the Display ("Spectator Area") and/or an area for vehicular parking ("Parking Area"), the PURCHASER shall: E) Ensure that the Spectator Area does not infringe on the Display Area; F) Have sole responsibility for ensuring that the terrain of the Spectator Area and any structures thereon, including, but not limited to grandstands and bleachers are safe for use by spectators; G) Have sole responsibility for ensuring that the Parking Area is safe for use; H) Have sole responsibility to police, monitor and appropriately control spectator access to the Spectator Area and the Parking Area and police, monitor and appropriately control the behavior of persons in these areas. It is expressly agreed that PYRO, (including its operators and helpers) shall not inspect, police, monitor or otherwise supervise any area of the site other than the Display Area, except to ensure: I) That any Spectator or Parking Areas are outside the Display Area; and J) After completion of the Display, that the Display Area is cleared of any live firework debris originating from the program.

4) PURCHASER shall pay to PYRO the sum of EIGHT THOUSAND Dollars (\$ 8,000.00). A deposit of \$ 2,000.00 must be paid by MAY 4, 1993. Full final payment is due within ten (10) calendar days after the date of the display. A finance charge at a periodic rate of 1.5% per month, 18% annual percentage rate, or the maximum rate permitted by law, whichever is less, will be charged on the unpaid balance after 10 days from the date of the display. PURCHASER, by signing this Agreement, authorizes PYRO to receive and verify financial information concerning PURCHASER from any person or entity.

5) PURCHASER agrees to assume the risk of weather, or other causes beyond PYRO's control, which may prevent the display from being safely discharged on the scheduled date, which may cause the cancellation of any event for which PURCHASER has purchased the display, or which may affect or damage such portion of the exhibits as must be placed and exposed a necessary time before the display. It shall be within PYRO's sole discretion to determine whether or not the display may be safely discharged on the scheduled date and at the scheduled time. If, for any reason beyond PYRO's control, including, without limitation, inclement weather, PYRO is unable to safely discharge the display on the scheduled date or should any event for which PURCHASER has purchased the display be cancelled, the parties shall attempt to negotiate a new display date, which shall be within 60 days of the original display date. PURCHASER further agrees to pay PYRO for any additional expenses made necessary by this postponement. If they are unable to agree on a new display date, PYRO shall be entitled to liquidated damages from PURCHASER as if PURCHASER had cancelled the display on the date set for the display, as provided in the following paragraph.

6) PURCHASER shall have the option to unilaterally cancel this display at any time. If PURCHASER exercises this option, PURCHASER agrees to pay to PYRO, as liquidated damages, the following percentages of the agreed contract price. 1) 25% if cancellation occurs three (3) or more days before the date scheduled for the display, 2) 50% if cancellation occurs between two (2) days prior to and the actual date set for the display, 3) 75% if cancellation occurs on the date set for the display but prior to the time physical set-up of the display actually begins, 4) 100% thereafter. If cancellation occurs prior to the date set for the display, PURCHASER agrees to pay to PYRO, in addition to the above percentages, the value associated with any specific custom work performed by PYRO or its agents including but not limited to music/narration tape production and/or sponsor logos.

(continued on reverse side)